91-1145

(1)

Supreme Court, U.S.
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Case No. _____

In The

THE UNITED STATES SUPREME COURT

FOR THE OCTOBER TERM 1992

Ron Campbell,
Petitioner,

vs.

Thalia Dondero, et. al.
Responendts.

Petition For Writ Of Certiorari To The Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Petitioner, *In Propria Persona*

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Has a lower court for a State acted improvidently and in disregard of **28 U.S.C. §1446(5)** when it dismisses a legitimate complaint and its record shows that the Plaintiff has timely petitioned for removal of the case to a U. S. District Court, noticed the lower State court of transfer, and filed bond with the Federal Court. Hearing on scheduling order was pending, at which time jurisdiction was accepted and the Federal Court, *en banc*, issued a "SCHEDULING ORDER," signed by all four judges as a true court of equity under **28 U.S.C. Rule No. 1**?

2. Has a single U. S. District Court judge acted improvidently when he (without cause) remands a case to the lower court for a State without further *due process*, consideration, notice, or hearing after the U. S. District Court accepted the removal from the lower State court *en banc* and issued the "SCHEDULING ORDER"?

3. Has a lower court for the State acted improvidently if it dismisses a legitimated complaint when the adverse party (Plaintiff) perfected prior service error, and then moved the court for default judgment against Defendants who

failed to answer or answer untimely and the adverse party (Party) has objected?

4. Has a lower court for a State acted improvidently or in violation of **28 U.S.C. §1406** by accepting and not transferring an *in propria persona* litigant's refilling, when it is known to the lower court that a U. S. Court of Appeals has instructed the *in propria persona* litigant to correct defects, and refill the case; and the lower court for the State knows the case had already been determined by the federal judiciary to be within Federal Jurisdiction?

5. Does *liberal construction* under **U.C.R. No. 12(a)** by the lower court for a State after recognizing error and setting aside a fifteen (15) month old order, extend to include acceptance of a "Joinder in Answer" as a responsive pleading and against the adverse party's numerous objections and motions for default judgment when the Joinder in Answer has been filed over ten (10) months after the time allowed by the rules of the courts?

6. Has a Plaintiff, appearing *in propria persona* status, been treated improvidently or in violation of the **Judicial Act of 1789 of the First Congress, Session I, Chap. 20**

(XX), Sections 32 and 35, when the District Court and the Supreme Court for a State order sanctions against the *in propria persona* litigant for not appearing with an attorney who is a member of the bar for said courts?

7. Does a Supreme Court for a State act improvidently by "ORDERING DISMISSAL" for *lack of jurisdiction*, when a litigant, appearing *in propria persona*, has filed a timely appeal based on the following sequence of events:

(a) a "MINUTE ORDER" is served on the parties by the Clerk of the Court;

(b) Plaintiff–Appellant files a timely "NOTICE OF APPEAL," based on the "MINUTE ORDER" and without any knowledge of a "FINAL ORDER";

(c) Counsel for answering Defendants files an untimely "FINAL ORDER" without service on the Plaintiff–Appellant, and which is three (3) days beyond the time for Plaintiff–Appellant to file "NOTICE OF APPEAL;" wherein default would be expected via reliance on the date of the "MINUTE ORDER";

(d) said Supreme Court later relies on the "FINAL ORDER," filed by the counsel of record for only the

answering Defendants, which served to mislead the court and cause an error by claiming the adverse party's "NOTICE OF APPEAL" was premature?

8. Does the meaning of *liberal construction* extend only to perfection of the adverse Defendants' defects in pleadings and proper authority, thereby allowing the adverse party to rely on political protection of the judiciary against an *in propria persona* litigant, without regard for the force and effect of the **Judiciary act of 1789 of the First Congress, Session 1, Chap. 20 (XX), Sections 32 and 35** and a substantial view toward justice based on the merits of the acts of the parties?

9. Does *sovereign immunity* extend to protect municipal, county, and state government officials who commit personal acts under *color of law*, which are in violation of: civil law(s), constitutional restraint(s) against *abuse of government power*, and criminal law; and more recently, these decisions appear to be in direct conflict with the United States Supreme Court's decision in the case of *Hafer v. Melo*, (October Term, 1991; S.Ct. dec.: Nov., 1991)?

LIST OF ALL PARTIES TO THE PROCEEDING

FOR THE ANSWERING (INCLUDING TWO UNTIMELY) DEFENDANTS:

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Attorney for Defendants, Thalia Dondero, Officer Wellington, and Las Vegas Metropolitan Police Department.
NOTE: Accepting service for all Defendants as a result of the most recent court decisions allowing responsive pleadings to be made after approximately three (3) years.

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225 E. Bridger
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1. Pursuant to the provisions of 28 U.S.C. §1257 and the **United States Supreme Court Rule [SCR] No. 10.1(c)**, the Petitioner, Ron Campbell E.A., appearing *In Propria Persona*, respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court for

the State of Nevada entered in this proceedings on the 30th day of September, 1991.

OPINION BELOW

2. The "ORDER DISMISSING APPEAL" of the Supreme Court of the State of Nevada was issued and filed *en banc* on September 30, 1991, and is appended hereto. See: Appendix "A" (App.•1—App.•3).

JURISDICTION

3. This Court's jurisdiction is invoked under the provisions of **United States Supreme Court Rule (U.S.C.R.) No. 10(c)**, and **28 U.S.C. §1257**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

4. CONSTITUTIONAL PROVISIONS:

(a) Article III, Section 2, Paragraphs 1 and 2 of the United States Constitution:

[1] "[T]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United states, and Treaties made, or which shall be made, under their

Authority; — to all Cases affecting Ambassadors, or other public Ministers and Consuls; ..., and between a State, or the Citizens thereof, ..."

[2] "... [I]n all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

5. STATUTES:

(a) **Judicial Act of 1789 of the First Congress, Session I, Chap. 20 (XX), Section 32:**

"[S]ect. 32. And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed, or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer,

which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.

(b) **Judicial Act of 1789 of the First Congress, Session I, Chap. 20 (XX), Section 35:**

"[S]ect. 35. And be it further enacted. That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. ...."

Approved, September 24, 1789.

(c) 28 U.S.C. §1257:

State courts; appeal; certiorari

"[F]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statue of the United states is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

(d) 28 U.S.C. §1446(5):

Procedure for removal

(5) "[I]f the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If

the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further."

STATEMENT OF THE CASE

6. NATURE OF THE CASE:

This case arises under a civil claim of activities which destroyed and totally wasted Petitioner's business property. Petitioner alleged that these activities were in violation of statutory prohibitions imposed by **Racketeer Influenced and Corrupted Organizations Acts (RICO/NRS Chapter 207)**. Petitioner sought relief under the provisions of **18 U.S.C. §§1961, et seq.**

7. MATERIAL FACTS PRECIPITATING COMPLAINT:

Petitioner was the sole proprietor of a business establishment known as the REGENCY COCKTAIL LOUNGE AND RESTAURANT in Las Vegas, Nevada. Petitioner operated this business from 1980 through September 28, 1983. The business was duly licensed to operate as "restaurant/lounge" with a seating capacity in excess of fifty (50) persons; as such, under the applicable municipal, county, and state statutory provisions, minors are allowed to be on the premises where

intoxicating liquors are served but not in areas where gaming machines or activities are conducted.

Petitioner and his employees became the "target" of a scheme being operated by the Defendant's; in which the Defendants brought frivolous charges against the Petitioner in an attempt to extort moneys on the basis of "license privileges." Defendants' frivolous charges were based on false assertions, intimidation tactics, threats, and allegations that Petitioner's business license should be treated as a "saloon" in which case minors are not allowed on the premises under any circumstances.

The Defendants attempted to use Petitioner's legitimate license privileges as a vehicle for extortion of moneys and/or undue enrichment. The pattern of the scheme operated by these Defendants was as follows:

(a) first, the police officer(s) would bring false charges and allegations against the Petitioner's employees;

(b) second, the Petitioner's ability to continue to operate his business under the privileges granted by the municipal and county licensing authorities would be threatened to be canceled unless the Petitioner paid additional moneys (bribes), as much as ten thousand dollars ($10,000.00) on two (2) different occasions;

thereby, establishing a significant incentive to be left alone to conduct the business at hand — if you may;

(c) third, repeated false charges would be asserted and filed against the Petitioner's employees in an effort to intimidate the Petitioner and show a pattern of a "problem" business in the community;

(d) fourth, the Petitioner's legitimate and respectable business activities would be closed if he refused to cooperate with this "extortion scheme."

Petitioner's appeared before the licensing authorities on one (1) occasion in which Petitioner's attorney was present and witnessed the attempted extortion of ten thousand dollars ($10,000.00). Petitioner's attorney dismissed himself from these activities.

On a second occasion the Board of County Commissioners attempted to extort ten thousand dollars ($10,000.00), unless the Petitioner paid the moneys. Petitioner's refusal to submit to this scheme was followed by the unlawful revocation of the Petitioner's business license privileges on September 28, 1983.

Revocation of Petitioner's business license and closure of the Petitioner's business was done prior to a Jury Trial of the alleged activities. Petitioner's employees had been charged with three (3) separate counts of having minors on the

premises which were legitimately open to the public, and one (1) additional charge of Petitioner's employee serving a minor intoxicating liquor on the premises.

All charges were brought by the same arresting officer; however, there were four (4) separate incidents. Regarding the first three (3) charges of having minors on the premises, the Petitioner and his employees appeared before three (3) different District Court Judges in the State's courts. Each time the Petitioner presented his business license together with the employee's testimony. All three (3) District Court Judges DISMISSED these charges in the face of having no merits.

A Trial by Jury was commenced in the District Court for the State of Nevada for the County of Clark before the Honorable Judge Guy regarding the fourth count of a minor having been served alcoholic beverages on the premises. However, after the first day of trial commenced and the State's primary material witness (arresting officer) testified; Judge Guy dismissed the Jury, admonished the prosecutor, and reprimanded the arresting officer for making false statements under oath and bringing false allegations against the Petitioner and his employee. Judge Guy then DISMISSED all the allegation and complaint against the Petitioner and his employee on

September 29, 1983 (one day after closure of Petitioner's business establishment).

Licensing authorities refused to reinstate Petitioner's business license after proper application and appeal by the Petitioner. Even though the Petitioner and his employees had exonerated themselves of any sanctions imposed by wrongful acts, the licensing authorities were able to continue and prevail in the goal of their scheme, *i.e.*, either pay them undue enrichment or cease to do business in the community.

Ultimately, this caused complete wasting of the Petitioner's value in his business property, value in licensed privileges to offer legitimate Petitioner's business services to the public.

8. PROCEEDINGS IN THE COURTS BELOW:

Petitioner, appearing *In Propria Persona* status, originally filed a claim under the provisions of **42 U.S.C. § 1983** in the U. S. District Court for the District of Nevada in 1986. Petioner presented the factual evidence of the **RICO** infractions, but failed to properly articulate Petitioner's claims in this regard.

Only one (1) of the Defendants named in the complaint answered in a timely manner. Two (2) answered beyond the time allowed by the rules of the courts. The Records of the

Courts proceedings establish Defendants sole counsel of record authority for only three (3) Defendants. Said counsel has repeatedly tried to cover and assert that all other Defendants in these proceedings were not in DEFAULT FOR FAILURE TO ANSWER.

A brief review of the judicial rulings by the courts demonstrates the Petitioner's technical difficulties in attempting to perfect service and pleadings, in order to reach to any judicial consideration of the wrongful acts that were complained of by the Petitioner, *to wit:*

(a) June 26, 1987: In the U. S. District Court for the District of Nevada, District Judge LLOYD D. GEORGE granted the Defendants' "Motion to Dismiss" the Petitioner's complaint. Petitioner initially served all Defendants by "Return Receipt, Certified, Prepaid U.S. Mail." Petitioner's civil rights cause of action was dismissed with prejudice, as the result of a statute of limitations bar. Petitioner's **RICO** allegations were dismissed without prejudice, as a result of insufficiency of service of process. See: Appendix "M" (App.•29 — App.•35).

(b) June 1, 1988: In the U. S. Court of Appeals for the Ninth Circuit, Circuit Judges SCHROEDER, NOONAN,

and O'SCANNLAIN dismissed the Petitioner's "Appeal"; stating that: "[T]he district court's order dismissing allegations of the complaint, but not dismissing the underlying action, is not a final order and is, therefore, not appealable under 28 U.S.C. §1291. . . . the remaining claims are not yet barred by the statute of limitations, and may be pursued through refilling and proper service." See: Appendix "L" (App•27 — App.•28).

(c) July 5, 1988: In the U. S. District Court for the District of Nevada, District Judge LLOYD D. GEORGE ordered the dismissal "[m]andate be spread upon the records of this Court." See: Appendix "K" (App•26).

(d) September 26, 1988: In the District Court for the State of Nevada for the County of Clark, the Petitioner filed a perfected complaint rendered proper service on all the Defendants by perfected "Summons" and "Service" being rendered through that court to cure the earlier imperfections.

(e) September, 27, 1989: In the U. S. District Court for the District of Nevada, the Petitioner filed for "Removal" of the case from the State court to the Federal court, perfecting service on all parties.

(f) October 20, 1988: Petitioner gave "Notification of Transfer" and the acceptance by the U. S. District Court for the District of Nevada to the Deputy Clerk for the District Court for the State of Nevada for the County of Clark.

(g) November 18, 1988: In the U. S. District Court for the District of Nevada, the Petitioner filed and moved the court to issue "Default Judgment" against all the Defendants who failed to file "Answers." None of the courts have addressed this issue to date.

(h) December 20, 1988: In the District Court for the State of Nevada, District Judge JACK LEHMAN filed an "Order" granting "Defendants' Motion to Dismiss" all Defendants; said "Order" was issued by him at a "Hearing" on December 13, 1988, based on "[n]o opposition having been filed by Plaintiff" and "[n]o appearance having been made by Plaintiff." Defendants were also given "[t]wenty days from the date of entry of this Order in which to answer or otherwise respond to Plaintiff's claim for relief under NRS 270.370." Petitioner received no "Notice of Hearing" from said court. The court records proves that this court had knowledge that

the case had been transferred to federal jurisdiction. See: Appendix "J" (App.•23 – App.•25).

(i) December 30, 1988: In the U. S. District Court for the District of Nevada, Chief District Judge EDWARD C. REED, JR., and District Judges LLOYD D. GEORGE, HOWARD D. MC KIBBEN, and PHILIP M. PRO issued and all signed *en banc* a "Scheduling Order" setting "[M]onday, the 1st day of May, 1989," for the close of discovery. Further, at item 9 of said order it was stipulated that "[T]his Order may only be amended upon motion and good cause shown." See: Appendix "I" (App.•18 – App.•22).

(j) March 2, 1989: In the U. S. District Court for the District of Nevada, District Judge LLOYD D. GEORGE issued a "Minute Order In Chambers" remanding the case to state court, "[P]ursuant to 28 U.S.C. §1446, only Defendants may effect removal." This was done without motion, hearing, appearance of counsel from either side, and without "[g]ood cause shown," as stipulated in the previous *en banc* "Scheduling Order" and after said order was issued. See: Appendix "H" (App.•17).

(k) March 17, 1989: In the U. S. District Court for the District of Nevada, District Judge LLOYD D. GEORGE

issued a "Minute Order In Chambers" releasing Petitioner's cash deposit. See: Appendix "G" (App.•16).

(l) November 20, 1990: In the U. S. Court of Appeals for the Ninth Circuit, Circuit Judges FLETCHER, WIGGINS, and RYMER issued a "Memorandum" ordering dismissal of Petitioner's "[a]ppeal pursuant to 28 U.S.C. §1447(d) for lack of jurisdiction. . . . due to a 'defect in removal procedure.'" See: Appendix "F" (App.•13 – App.•15).

(m) January 15, 1991: In the District Court for the County of Clark for the State of Nevada, District Chief Judge JACK LEHMAN granted Plaintiff's "[M]otion to Set Aside Order Filed December 20, 1988." The record reflects that "[C]ourt admonished Plaintiff . . . to proceed at his own peril." See: Appendix "E" (App.•11 – App.•12).

(n) February 12, 1991: In the District Court for the County of Clark for the State of Nevada, District Chief Judge JACK LEHMAN granted Defendants' "Motion to Dismiss," and ordered that "[p]laintiff's opposition to said motion is frivolous and that plaintiff is ordered to pay defendants $350.00 for attorney fees as a sanction." See: Appendices "D–1" (App.•9) and "D–2" (App.•10).

(o) March 22, 1991: In the District Court for the County of Clark for the State of Nevada, Defendants filed and District Chief Judge JACK LEHMAN signed an "Order" submitted by them which was included substantially all the provisions of Judge Lehman's orders issued on December 20, 1988, and February 12, 1991. Additionally, the order further stated that "[t]he Answer filed November 14, 1988 on behalf of Defendants Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the Joinder in Answer, filed September 20, 1989 on behalf of all other named Defendants is accepted by this Court as a responsived pleading under Rule 12(a) of the Nevada Rules of Civil Procedure . . ." See: Appendix "C" (App.•6 – App.•8).

(p) August 12, 1991: In the Supreme Court of the State of Nevada, Acting Chief Justice SPRINGER issued an "Order" for plaintiff to show cause why "[j]udgment of the district court is not final as to all the parties." Appellant was not allowed to appear before the bar without counsel. Appellant obtained Counsel, who then learned of the existence of the March 22, 1991, "Order" which had not been served on the Appellant, and requested

that "[t]his court dismiss the appeal without prejudice to his right to reinstate it when a final judgment has been entered by the district court. Included in appellant's motion is a stipulation to dismiss signed by opposing counsel." The court noted "[t]hat appellant's notice of appeal was premature and fails to vest jurisdiction in this court." Twenty (20) days was allowed for "[s]how cause why this appeal should not be dismissed with prejudice." See: Appendix "B" (App.•4 — App.•5).

(q) September 30, 1991: In the Supreme Court of the State of Nevada, Chief Justice MOWBRAY, and Justices SPRINGER, ROSE, STEFFEN, and YOUNG issued an "Order" signed *en banc* "[d]ismissing appellant's comp— laint seeking damages pursuant to 18 U.S.C. section 1961 (1988)." Further, the court relied on the March 22, 1991, "Order" filed by Defendants which was stipulated by counsel of both parties to not have been served on the Appellant. Thus, the late (38 days) filing of "Order" submitted by the counsel for Defendants served to achieve the illusion to this court that "[i]t appeared that appellant's notice of appeal was premature and failed to vest jurisdiction in this court. . . . Accordingly, we

dismiss this appeal with prejudice." See: Appendix "A" (App.•1 – App.•3).

WHEN FEDERAL QUESTIONS WERE FIRST RAISED

9. FIRST FILED IN FEDERAL COURT:

The Petitioner has attempted to get the question of violations of federal questions, *i.e.*, violations of **Racketeer Influenced and Corrupted Organization Acts (RICO/NRS Chapter 207)** seeking relief pursuant **18 U.S.C. §§1961, et seq.**, at issue and to obtain fair judicial consideration of the courts throughout these proceedings at all levels. See: Appendices "A" – "M" (App.•1 – App.•35).

10. ERRONEOUSLY FILED IN STATE COURT:

The Petitioner created an error by perfecting his claim for violations of the **RICO Acts**, seeking relief under **18 U.S.C. §§1961, et seq.**, and perfecting service through the state district court. Petitioner immediately (next day) filed and requested a transfer of the case to the federal district court.

11. TRANSFERRED TO FEDERAL COURT:

The federal district court accepted the case *en banc* and issued a very strict "Scheduling Order" stipulating the management of this case. See: Appendix "H" (App.•16 –

App.•20). This has raised a question of the applicability of this Court's interpretation of **28 U.S.C §1446(5)**, since a single judge over turned the *en banc* order.

REASONS FOR GRANTING THE WRIT

12. The Petitioner submits to this high Court that important reasons for granting this writ of certiorari are, *to wit:*

(a) There is a substantial question as whether an *en banc* ruling and stipulated ORDER by a U. S. District Court (or any court for that matter) can be over ruled and reversed by a single judge who has previously agreed to that ORDER. In this instance "[g]ood cause" was not shown, notice given, or any other consideration offered. The question of the applicability of **28 U.S.C. §1446(5)** in which it is stated that "[I]f the United States district court determines that such petition shall be granted, it shall so notify the state court in which prosecution is pending, which shall proceed no further." These proceedings do not appear to be in agreement with the provisions of **28 U.S.C. Rule No. 1.**

(b) The Defendants relied on *sovereign immunity* to protect them in their acts and in their pleadings in defense of the Petitioner's allegations of wrong doing; the

actions by these courts fail to reach to the material evidence to determine the merits of bringing these Defendants to justice; this appears to be in conflict with this Courts recent decision in *Hafer v. Melo*, U.S. S.Ct. October Term, 1991; dec. iss.: Nov. 1991).

(c) The proceedings in this case raise a number of issues, which are set forth in the "QUESTIONS PRESENTED," regarding whether the judiciary acted improvidently with regard to achieving an expedient end result without substantial justice having been served. *Lack of jurisdiction* does not appear to be precluded by **Article III, Section 2, Paragraphs 1 and 2 of the United States Constitution** and appears to be against the policy of this high Court.

(d) The refusal to allow this Petitioner to appear *In Propria Persona* before the Supreme Court for the State of Nevada to pead his own case appears to violate the provisions of the **Judicial Act of 1789 of the First Congress, Session I, Chap. 20 (XX), Sections 32 and 35**, and the policies of this high Court in the case of *Haines v. Kerner, et al.*, 404 U.S. 520 (1971).

(e) Interpretation of *liberal construction* under **U.C.R. No. 12(a)** in these proceedings appears to have served

"political expedience" rather than a "just determination of every . . . proceeding."

CONCLUSION

13. The merits of fair judicial consideration of the material evidence supporting Petitioner's allegations of the Defendants having commited serious crimes has been precluded by a judicial reluctance to treat this *in propria persona* litigant fairly. Punishment of the acts complained of by the Petitioner should out way the technical imperfections of pleadings which the Petitioner has timely corrected.

The failure to enforce the law in this instance is a direct encouragement by the judiciary for these Defendants to continue with similar activities every day. Petitioner believes that *supervisory control* by this high Court with remand instructions is in the best interests of the whole body politic and principles of justice.

Respectly submitted,

Ron Campbell, E.A.
2408 Santa Clara Drive
Las Vegas, Nevada 89104
(702) 731-0851
Petitioner, *In Propria Persona.*

APPENDIX "A"

NO. 22107

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON CAMPBELL,

Appellant,

v.

THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a Member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA,

Respondents.

ORDER DISMISSING APPEAL

Filed September 30, 1991

Signed by: Chief Justice Mowbray, Justice Springer, Justice Rose, Justice Steffen, Justice Young.

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 U.S.C. section 1961 (1988).

Appellant filed in this court a document entitled "Ex Parte Motion to Dismiss Appeal," claiming that the judgment

of the district court is not final as to all the parties. Appellant requested that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment had been entered by the district court. Included in appellant's motion was a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, this court was unable to identify any party to whom the district court's judgment was not final. Further, we noted that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. Thus, it appeared that appellant's notice of appeal was premature and failed to vest jurisdiction in this court. See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987) This court therefore ordered appellant to show cause why this appeal should not be dismissed with prejudice.

In response to our order to show cause, appellant does not identify specific parties to whom the district court's order was not final. Rather, appellant states that "[a]nswers had been filed in the court below for Defendants Dondero, Las Vegas Metropolitan Police Department, and Wellington only, and the Order of the Court below filed March 22, 1991, actually applied only to the answering Defendants." This is not true. As stated in the order of the district court entered March 22,

1991, all other named parties joined in the answer on September 20, 1989. The district court's order was thus final as to all parties.

Because the district court's order was final as to all claims and all parties, and because appellant's notice of appeal was premature with respect to that order, we conclude that we lack jurisdiction to entertain this appeal. Accordingly, we dismiss this appeal with prejudice. Deny as moot the parties' motion to dismiss this appeal without prejudice.

It is so ORDERED.

———————•———————

APPENDIX "B"

NO. 22107

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON CAMPBELL,

Appellant,

v.

THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a Member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA,

Respondents.

ORDER

Filed August 12, 1991

Signed by: Acting Chief Justice Springer.

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 USC §§ 1961 et seq.

Appellant has filed in this court a document entitled "Ex-Parte Motion to Dismiss Appeal," claiming that the

judgment of the district court is not final as to all the parties. Appellant requests that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment has been entered by the district court. Included in appellant's motion is a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, we are unable to identify any party to whom the district court's judgment was not final. Further, we note that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. It appears, therefore, that appellant's notice of appeal was premature and fails to vest jurisdiction in this court. See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

Accordingly, appellant shall have twenty (20) days from the date of this order within which to show cause why this appeal should not be dismissed with prejudice. We stay the briefing of this appeal pending further order of this court.

It is so ORDERED.

APPENDIX "C"

NO. A268414

DISTRICT COURT
CLARK COUNTY, NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a Member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA,

Defendants.

ORDER

HEARING DATE: 02-12-91

HEARING TIME: 9:00 A.M.

Filed March 22, 1991

Signed by: District Judge Jack Lehman (ss.:D.B.).

[NOTE: No service to Plaintiff.]

Defendants Motion to Dismiss having come on for hearing this 12th day of February, 1991, Plaintiff RON CAMPBELL

appearing on his own behalf, and Defendants THALIA DONDERO, MANNY CORTEZ, R. J. RONZONE, W. WILSON, BRUCE WOODBURY, CLARK COUNTY LIQUOR CONTROL BOARD, D. FITZPATRICK, OFFICER WELLINGTON, MALON EDWARDS, the CLARK COUNTY LIQUOR CONTROL BOARD, THE CLARK COUNTY LICENSE DEPARTMENT, THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE appearing by and through their attorneys, RAWLINGS, OLSON & CANNON and DANA JONATHON NITZ, ESQ., and after reviewing the Complaint and points and authorities of the parties on file herein, and having heard the arguments of counsel, this Court does hereby

ORDER, ADJUDGE AND DECREE that Defendants' Motion to Dismiss the Plaintiff's Civil Complaint for Damages from Racketeer Influenced and Corrupted Organization Acts (RICO/NRS Chapter 207) seeking relief under 18 USC §§1961 et seq. is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claim for relief pursuant to 18 USC §§1961 et seq. is dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claims for punitive damages are dismissed as to all Defendants pursuant to NRS 41.035.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Opposition to said Motion is frivolous and that Plaintiff is ordered to pay to Defendants, in care of their counsel, RAWLINGS, OLSON & CANNON, $350.00 as and for attorneys fees as a sanction under Rule 11 of the Nevada Rules of Civil Procedure and NRS 18.010.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Answer filed November 14, 1988 on behalf of Defendants Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the Joinder in Answer, filed September 20, 1989 on behalf of all other named Defendants is accepted by this Court as a responsive pleading under Rule 12(a) of the Nevada Rules of Civil Procedure and no further pleading need be filed by Defendants.

DATED this 22 day of February March 1991.

SUBMITTED BY: RAWLINGS, OLSON & CANNON, Dana Jonathon Nitz, Esq.

———————•———————

APPENDIX "D-1"

NO. 88-A-268414-C

DISTRICT COURT
CLARK COUNTY, NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

COURT ORDERED

HEARING DATE: 02/12/91

Filed February 12, 1991

Civil Court Minute Order by: Chief Judge Jack Lehman
(Sandra Smith, Relief Clerk).

HEARING: Defendant's Motion to Dismiss.

Dana Nitz, esq. advised Court that the plaintiff should be responsible for attorney fees in the amount of $350.00

COURT ORDERED: Defendant's motion is granted and plaintiff's opposition to said motion is frivolous and that plaintiff is ordered to pay to defendants $350.00 for attorney fees as a sanction.

APPENDIX "D–2"

NO. 88–A–268414–C

IN THE DISTRICT COURT FOR THE COUNTY OF CLARK
FOR THE STATE OF NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

COURT ORDERED

HEARING DATE: 02–12–91

Filed February 12, 1991

Civil Court Minute Order by: District Judge Jack Lehman (ss.:D.B.).

HEARING: Defendant's Motion to Dismiss.

Dana Nitz, esq. advised Court that the plaintiff should be responsible for attorney fees in the amount of $350.00

COURT ORDERED: Defendant's motion is granted and plaintiff's opposition to said motion is frivolous and that plaintiff is ordered to pay to defendants $350.00 for attorney fees as a sanction.

———————•———————

APPENDIX "E"

NO. 88-A-268414-C

IN THE DISTRICT COURT FOR THE COUNTY OF CLARK
FOR THE STATE OF NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

COURT ORDERED

HEARING DATE: 01/15/91

Filed January 15, 1991

Civil Court Minute Order by: Chief Judge Jack Lehman
(Debra Vinson, Court Clerk).

HEARING: PLAINTIFF'S MOTION TO SET ASIDE ORDER FILED DECEMBER 20, 1988.

COURT ORDERED: Plaintiff's motion is granted with regard to setting aside the order filed December 20, 1988. With regard to the Motion to Dismiss, Plaintiff will have twenty days to respond and Mr. Nitz will have five days after that to reply to the response. All other requests in todays motion are denied. The Court advised Plaintiff that if this Court finds the claim frivolous, Defendant will be awarded attorney's fees and costs. The Court admonished Plaintiff to

comply with the rules of the Court and to proceed at his own peril. Plaintiff to deliver a courtesy copy of response to Chambers. Mr. Nitz to prepare the order.

2-12-91 at 9 a.m. - Hearing: Defendant's Motion to Dismiss.

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APPENDIX "F"

NO. 89-15493

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RON CAMPBELL,

Plaintiff-Appellant,

v.

THALIA DONDERO, et al.,

Defendants-Respondents.

MEMORANDUM*

Filed November 20, 1990

Before: FLETCHER, WIGGINS, and RYMER, Circuit Judges.

* NOT FOR PUBLICATION.

Ron Campbell appeals pro se the district court's remand of his civil RICO action which Campbell had removed to federal court. We dismiss the appeal pursuant to 28 U.S.C. § 1447(d) for lack of jurisdiction.

On September 26, 1988, Campbell filed his complaint in Nevada state court alleging federal and state RICO violations by the defendants. The next day, Campbell removed his action to federal district court for the District of Nevada. On March 17, 1989, the district court denied the petition for removal and remanded Campbell's action to state court because it

could only properly be removed by the defendants pursuant to 28 U.S.C. §1446. Campbell filed a timely notice of appeal with this court.

28 U.S.C. §1447(c) requires a district court to remand a case to state court when it determines the case was removed without jurisdiction. Whitman v. Raley's, Inc., 886 F.2d 1177, 1180 (9th Cir. 1989). Remand orders based on the grounds specified in section 1447(c), i.e., that removal was "improvident and without jurisdiction," are immune from appellate review. Themtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 343 (1976); Hansen v. Blue Cross, 891 F.2d 1384, 1387 (9th Cir. 1989) (citing 28 U.S.C. §1447(d); Gravitt v. Southwestern Bell Tel. Co., 430 U.S. 723, 723 (1977) (per curiam)). When a district court's remand order is based on a nonjurisdictional ground, however, section 1447(d) does not bar appellate review. Hansen, 891 F.2d at 1387 (citations omitted).

Here, the district court remanded Campbell's action to district court because Campbell, and not the defendants, and removed the case to feral court. Removal is available only to defendants. 28 U.S.C. §§1441(c), 1442, 1443, 1446(c); Okot v. Callahan, 788 F.2d 631, 633 (9th Cir. 1986). The district court, therefore, determined that it lacked jurisdiction to

review Campbell's action due to a "defect in removal procedure." See 28 U.S.C. §1447(c). Because the district court's decision to remand was based on a jurisdictional ground, section 1447(d) precludes our review of the remand order. See id.; Hansen, 891 F.2d at 1387.

Appellees' request for attorneys fees on appeal pursuant to Fed. R. Civ. P. 11 is denied.

DISMISSED.

APPENDIX "G"

NO. CV-S-88-770-LDG(LRL)

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

ORDER

Filed March 17, 1989

Minute Order In Chambers by: District Judge LLOYD D. GEORGE.

No Counsel present for parties.

The above referenced case having been remanded to state court and no bill of costs having been file,

IT IS ORDERED that the certificate of cash deposit posted September 27, 1988 in the amount of $500. is hereby excnerated and the cash released.

APPENDIX "H"

NO. CV-S-88-770-LDG(LRL)

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

ORDER

Filed March 2, 1989

Minute Order In Chambers by: District Judge LLOYD D. GEORGE.

No Counsel present for parties and "good cause" not having been shown by any motion of the parties.

Pursuant to 28 U.S.C. §1446, only Defendants may effect removal and petition for removal denied and matter remanded to state court.

SUBMITTED BY: RAWLINGS, OLSON & CANNON, Dana Jonathon Nitz, Esq.

APPENDIX "I"

NO. CV-S-88-770-LDG(LRL)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, et al.,

Defendants.

SCHEDULING ORDER
[Rule 16(b), F.R.C.P.]

Filed December 30, 1988

Signed *en banc* by: EDWARD C. REED, JR., Chief United States District Judge; LLOYD D. GEORGE, United States District Judge; HOWARD D. MC KIBBEN, United States District Judge; PHILIP M. PRO, United States District Judge.

This Scheduling Order shall be filed and served by the Clerk upon counsel for all parties (when a case is not exempt pursuant to Local Rule 190-1(a)(1) of this Court) at the time the case is at issue or in no event later than 120 days after the date of filing of the complaint or petition, whichever is earlier. In the event that a defendant or respondent has not yet appeared in the case, then counsel for the plaintiff(s) or petitioner(s) shall serve any such defendant(s) or respondent(s)

with a copy of this Scheduling Order within twenty (20) days from the date of this Order, or at the time of the service of process.

When the term "counsel" is used in this Scheduling Order, it shall include any and all parties appearing pro se.

This Court enters this Scheduling Order pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. THEREFORE, IT IS HEREBY ORDERED:

1. Any and all pleadings that may be brought under Rules 13 and 14 of the Federal Rules of Civil Procedure or joining additional parties under Rules 19 and 20 of the Federal Rules of Civil Procedure shall be filed within sixty (60) days from the date of this Order. Any party causing additional parties to be joined or brought into this action shall contemporaneously therewith cause a copy of this Order to be served upon the new party or parties.

2. Amendments to pleadings as provided for under Rule 15 of the Federal Rules of Civil Procedure, if the same are allowed without leave of Court, or motions for leave to amen, shall be filed and served within sixty (60) days from the date of this Order.

3. Any and all other motions, including but not limited to discovery motions, motions to dismiss and motions for

summary judgment (but excluding motions in limine), shall be filed and served no later than forty-five (45) days after the discovery deadline as fixed by this Scheduling Order or as may be extended by subsequent order of the Court.

4. Any motion filed beyond the time limit fixed by this Scheduling Order shall be stricken, unless the Court grants an exception for good cause shown.

5. DISCOVERY. Pursuant to Local Rule 190-1(b)(1), discovery in this action shall be completed on or before Monday, the 1st day of May, 1989.

6. EXTENSIONS OF DISCOVERY. An extension of the discovery deadline will not be allowed without a showing of good cause as to why all discovery was not completed within the time allotted. All motions or stipulations to extend discovery shall be received by the Court at least twenty (20) days prior to the date fixed for completion of discovery by this Scheduling Order or at least twenty (20) days prior to the expiration of any extension thereof that may have been approved by the Court. The Motion or stipulation shall include:

(a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;

(b) A specific description of the discovery which remains to be completed;

(c) The reasons why such remaining discovery was not completed within the time limit of the existing discovery deadline; and

(d) A proposed schedule for the completion of all remaining discovery.

7. In the event that the Federal Rules of Civil Procedure provide for any shorter time periods for the filing of motions or pleadings, said shorter time limits shall apply notwithstanding the time limits set forth in this Scheduling Order. Pursuant to the authority given to the Court in Rule 16(b) of the Federal Rules of Civil Procedure to establish deadlines for the filing of motions, motions for summary judgment under Rule 56 of said Rules must be filed no later than the time provided in paragraph 3 of this Order.

8. Upon expiration of the date for the filing of motions pursuant to paragraph 3 hereof, <u>if there are no motions pending</u>, the Clerk shall issue a Pretrial Notice Order pursuant to Local Rule 190-3 in a form approved by the Court. Otherwise, the Pretrial Notice Order shall be issued after the pending motions are decided or as otherwise directed by the Court.

9. This Order may only be amended upon motion and good cause shown.

10. In all cases where a party or counsel is required to effect service hereunder, a certificate of such service shall be filed forthwith with the clerk of the Court.

THE DATE of the Clerk's file mark shall constitute the date of this Order.

———————•———————

APPENDIX "J"

NO. A268414

DISTRICT COURT
CLARK COUNTY, NEVADA

RON CAMPBELL,

Plaintiff,

v.

THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a Member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA,

Defendants.

O R D E R

HEARING DATE: 12-13-88

Filed December 20, 1988

Signed by: JACK LEHMAN, District Court Judge

[NOTE: No notice of hearing to Plaintiff.]

Defendants' Motion to Dismiss having come on for hearing this 13th day of December, 1988, no appearance having been made by Plaintiff, and Defendants THALIA DONDERO,

MANNY CORTEZ, R. J. RONZONE, W. WILSON, BRUCE WOODBURY, CLARK COUNTY LIQUOR CONTROL BOARD, D. FITZPATRICK, OFFICER WELLINGTON, MALON EDWARDS, the CLARK COUNTY LIQUOR CONTROL BOARD, the CLARK COUNTY LICENSE DEPARTMENT, the LAS VEGAS METROPOLITAN POLICE DEPARTMENT and the CLARK COUNTY DISTRICT ATTORNEY'S OFFICE appearing by and through their attorney, DANA JONATHON NITZ, ESQ., and after proper notice on behalf of Defendants to Plaintiff of their intention to seek dismissal, no opposition having been filed by Plaintiff, and after reviewing all of the pleadings and exhibits on file herein, and having heard the arguments of counsel, this Court does

HEREBY ORDER, ADJUDGE AND DECREE that Defendants' Motion to Dismiss the Plaintiff's Civil Complaint for Damages from Racketeer Influenced and Corrupted Organization Acts (RICO/NRS Chapter 207) seeking relief under 18 USC §§1961 et seq. is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claim for relief pursuant to 18 USC §§1961 et seq. is dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants shall have twenty days from the date of entry

of this Order in which to answer or otherwise respond to Plaintiff's claim for relief under NRS 270.370.

DATED this 20 day of December, 1988.

———————•———————

APPENDIX "K"

NO. CV-S-86-896-LDG

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RON CAMPBELL,

Plaintiff-Appellant,

v.

THALIA DONDERO, et al.,

Defendants-Appellees.

ORDER ON MANDATE

Filed July 5, 1988

Signed by: Lloyd D. George, U. S. District Judge.

The above-entitled cause having been before the United States Court of Appeals for the Ninth Circuit, and the Court of Appeals having on June 1, 1988, issued its mandate dismissing the appeal, and the Court being fully advised in the premises, NOW, THEREFORE, IT IS

ORDERED that the mandate be spread upon the records of this Court.

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APPENDIX "L"

NO. 87-2467

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RON CAMPBELL,

Plaintiff-Appellant,

v.

THALIA DONDERO, ET AL.,

Defendants-Appellees.

ORDER

Filed June 1, 1988

Before: SCHROEDER, NOONAN, and O'SCANNLAIN, Circuit Judges.

HEARING: NOT FOR PUBLICATION.

This matter came before this panel for argument on May 12, 1988. Although the district court dismissed with prejudice Plaintiff's 42 U.S.C. § 1983 claim, it dismissed the remainder of the complaint without prejudice. The district court's order dismissing allegations of the complaint, but not dismissing the underlying action, is not a final order and is, therefore, not appealable under 28 U.S.C. § 1291. State of California v. Harvier, 700 F.2d 1217, 1219 (9th Cir.), cert. denied, 464 U.S. 820 (1983); Dockrey v. Dockrey, 437 F.2d 896, 898 (9th

Cir. 1971). See Fed. R. Civ. P. 54(b). It appears that at least some of the remaining claims are not yet barred by the statute of limitations, and may still be pursued through refilling and proper service. This court, however, must dismiss this appeal for lack of a final, appealable order disposing of the entire underlying action. Accordingly, the appeal is dismissed.

———————•———————

APPENDIX "M"

NO. CV-S-86-896-LDG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RON CAMPBELL,

Plaintiff,

vs.

THALIA DONDERO, et al.,

Defendants.

ORDER GRANTING MOTION TO DISMISS

Filed June 26, 1987

Signed by: LLOYD D. GEORGE, United States District Judge.

Defendants have moved the court to dismiss the plaintiff's complaint based on insufficiency of process under Fed. R. Civ. P. 4(c), failure to timely serve the summons and complaint under Fed. R. Civ. P. 4(j), failure to state a claim upon which relief can be granted because of a statutes of limitations bar, and failure to state a claim upon which relief can be granted against several defendants because they are not subject to suit. Plaintiff filed a memorandum in opposition to defendants' motion and defendants filed a reply. After careful

consideration of the arguments of the parties, the court concludes that defendants' motion to dismiss must be granted.

Facts

Since December 1980, plaintiff was owner of the Regency Cocktail Lounge and Restaurant. Plaintiff's complaint alleges that between May and September of 1983 he was cited by defendant Wellington, an officer of the Las Vegas Metropolitan Police Department, for allowing minor on the plaintiff's business premises. A hearing at the Clark County License Department resulted in an imposition of a fine. Plaintiff contested and refused to pay the fine. On September 28, 1983, a hearing to show cause was held at which time plaintiff's business license was revoked. On September 29, 1986, plaintiff, acting pro se, initiated this action claiming denial of his civil rights guaranteed under the Fourteenth Amendment.[1] Those named as defendants in the complaint include Thalia Dondero, Manny Cortez, R. J. Ronzone and W. Wilson, Clark

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[1] In plaintiff's first cause of action, which should be read with the requisite degree of liberality as a cause of action brought pursuant to 42 U.S.C. section 1983, plaintiff also alleges violations of the RICO act (18 U.S.C. section 1961 et seq.), malicious prosecution, breach of contract and extortion. These other allegations, perhaps because of their cursory mention, have not been addressed by the parties. They do, however, come within the scope of this ruling.

County Commissioners; M. Fitzpatrick, the Director of Clark County License Department; Officer Wellington; Malon Edwards, a Deputy Clark County District Attorney; the Clark County Liquor Control Board; the Clark County Licensing Department; the Las Vegas Metropolitan Police Department; and the Clark County District attorneys office.

Statute of Limitations

Defendants contend that the complaint should be dismissed because the civil rights claim is time-barred. In Wilson v. Garcia, 471 U.S. 261, 105 S.Ct. 1983, 85 L.Ed.2d 254 (1985), the United States Supreme Court ruled that actions brought pursuant to 42 U.S.C. section 1983 would be governed by the state law statute of limitations applicable to personal injury actions. Id. at 1947, 85 L.Ed.2d at 266. The limitation of action period for personal injury claims in Nevada is two years. Nev. Rev. stat. section 11.190(4). Since this action was brought on September 28, 1986, three years after the events complained of, the civil rights cause of action is precluded by the running of the statute of limitations.

This court cannot accept plaintiff's argument relying on the dissenting opinion in Wilson v. Garcia. This court is bound by the majority opinion in that case. Nor is Nev. Rev. stat. section 207.520, which deals with the criminal offense of

unauthorized tampering with radio or television signals, the applicable statute of limitation. Therefore, the motion to dismiss the civil rights cause of action must be granted.[2]

Insufficiency of service of Process

Plaintiff had issued summonses for each of the named defendants on September 29, 1986. These summonses were served on defendants by mailing them, certified mail, return receipt requested, on January 26, 1987. Defendants argue that such service was insufficient under Fed. R. Civ. P. 4(c) and (d). Plaintiff responds that the purpose of service of process has been accomplished in this case since the parties have responded to the complaint.

The Federal Rules of Civil Procedure specify the manner to effect service of process in commencing an action. In addition, Fed. R. Civ. P. 4(c)(2)(C)(i) allows for service upon a defendant pursuant to the law of the state in which the district court is held.[3] Under the Federal Rules of Civil Procedure

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[2] The dismissal with prejudice relates only to the civil rights cause of action. The disposition of the remainder of the complaint is treated in the discussion below.

[3] The state law must meet the constitutional requisites of the due process clause. 5 C. Wright & A. Miller, Federal Practice and Procedure, section 1094, at 359 (1969).

process is served upon an individual by "delivering a copy . . . to him personally, or by leaving copies thereof at his dwelling house or usual place of abode . . . or by delivering a copy . . . to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(d)(1). The Nevada counterpart requires the same form of service. Nev. R. Civ. P. 4(d)(6). Since there is no provision allowing for mailing the summons and complaint, by certified mail, to the individual defendants, the plaintiff has failed to satisfy the requirements of federal and Nevada state law.

Nor did plaintiff comply with the state or federal law in serving process upon a government entity by simply mailing, by certified mail, the summons and complaint to the defendant government agencies. Fed R. Civ. P. 4(d)(6) requires that process "[u]pon a . . . government organization . . . by delivering a copy . . . to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of . . . process." The law of Nevada does not provide for service of process by certified mail to government agencies. see Nev. R. Civ. Pro. 4.

Pursuant to Fed. R. Civ. P. 4(j), this court concludes that the plaintiff has not shown good cause for not serving process within the statutory time limit of 120 days. A court should normally treat a motion to dismiss as a motion to quash in order to allow a plaintiff to opportunity to cure insufficient process. See Wright and Miller, supra note 3, section 1354, at 584–87. However, courts have broad discretion to dismiss an action when the ability to further prosecute an action is in doubt. Stevens v. Security Pacific National Bank, 538 F.2d 1387, 1389 (9th Cir. 1976). See also Pell v Azar Nut Co., 711 F.2d 949, 950 n.2 (10th Cir. 1983) (The court may dismiss when if it appears unlikely process will be instituted or plaintiff has shown a disinclination to prosecute the action further.). Because of the dismissal of the civil rights claim on the grounds discussed above, and as a result of the uncertainty as to whether the plaintiff intends to further prosecute the other claims briefly mentioned in the complaint,[4] this court rules that the remainder of the complaint should be dismissed without prejudice.

---

[4] See note 1, supra..

Accordingly, the civil rights cause of action is DISMISSED with prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief could be granted. The remainder of the complaint is DISMISSED without prejudice for insufficiency of service of process. The court need not address the other grounds for dismissal.

SO ORDERED.

Dated this 24 day of June, 1987.

———————•———————

(2)

No. 91-1145

Supreme Court, U.S.
FILED
MAR 19 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

RON CAMPBELL,

Petitioner,

vs.

THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; and W. WILSON, individually and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; M. FITZPATRICK, individually and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, individually and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MAHLON EDWARDS, individually and as a Deputy District Attorney of the CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; the CLARK COUNTY LIQUOR CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, and the CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, political subdivisions of the County of Clark, State of Nevada; and JOHN DOES I through XX, inclusive,

Respondents.

Petition For Writ Of Certiorari To The Nevada Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RAWLINGS, OLSON & CANNON

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OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Did the Supreme Court of Nevada properly dismiss Appellant's Appeal for lack of jurisdiction?

2. Did the Supreme Court of Nevada properly dismiss the Petitioner's appeal with prejudice, when the lower state court order was final as to all parties?

3. Do the rules of the Supreme Court of Nevada, restricting a pro se litigant's right to argue his appeal comport with Constitutional requirements?

LIST OF ALL PARTIES TO THE PROCEEDING

PLAINTIFF:

RON CAMPBELL

FOR THE ANSWERING DEFENDANTS:

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OPINIONS BELOW

The Order of the Nevada Supreme Court, issued and filed on August 12, 1991, held that Petitioner's appeal to that court was premature because his Notice of Appeal was filed on March 14, 1991, yet the district court's Order was not entered until March 22, 1991. Further, that Order granted Petitioner 20 days from August 12, 1991, to show cause why the appeal should not be dismissed with prejudice.

The succeeding Order, dated September 30, 1991, dismissed with prejudice the appeal of the Petitioner for failure to show cause why the premature appeal should not be dismissed. Also in that Order, the Nevada Supreme Court, after examining the record on appeal, held that they could find no parties as to whom the March 22, 1991 was not final. Thus, the court dismissed Petitioner's appeal both for lack of jurisdiction as premature and for lack of good cause shown.

GROUNDS FOR JURISDICTION

Petitioner attempts to invoke the jurisdiction of this Court under the United States Supreme Court Rule 10(c) and 28 U.S.C. §1257. Jurisdiction of this court over this Petition is challenged for the reason that no treaty or statute of the United States is drawn in question; no state *statute* is challenged as being unconstitutional or repugnant to federal treaties or laws, and no title, right, privilege, or immunity is specially set up or claimed under the Constitution, federal treaties, or statutes. It is agreed the Order of the Supreme Court of the State of Nevada,

issued on September 30, 1991, dismissing Petitioner's appeal with prejudice based on a lack of jurisdiction and a lack of good cause shown, was final, and the issuing court is the highest court in the State of Nevada. The final Order of the Eighth Judicial District Court of the State of Nevada, which Petitioner appealed to the Nevada Supreme Court, became final and was entered on March 22, 1991.

STATUTES AND RULES APPLICABLE TO THE CASE

(A) *SUPREME COURT RULES:*

Rule 13, Review on Certiorari; Time for Petitioning.

Subsection .1: A Petition for Writ of Certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the Clerk of this Court within 90 days after the entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review.

. . . .

Subsection .4: The time for filing a petition for a writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered and not from the date of the issuance of the mandate (or its equivalent under local practice).

(B) *STATUTES*:

28 U.S.C. §2101 Supreme Court; time for appeal or certiorari; docketing; stay:

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit, or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of judgment or decree. The justice of the Supreme Court, for good cause shown, may extend the time for applying for a Writ of Certiorari for a period not exceeding 60 days.

(C) *OTHER RULES*:

(1) Nevada Rule of Appellate Procedure Rule 4. *Appeal – When taken.*

(a) Appeals in civil cases.

1. In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the district court. The notice of appeal filed after the oral pronouncement of decision or order, but before the entry of a written judgment or order, shall have no effect. A notice of appeal must be filed after the entry of a written judgment or order, and no later than thirty (30) days after the date of service of written notice of the entry of the judgment or order appealed from. . . .

. . . .

A notice of appeal filed before the formal disposition of any timely post-judgment motion enumerated in this subdivision shall have no effect. A notice of appeal must be filed after the entry

> of a written order of the district court resolving any of the post-judgment motions enumerated in this subdivision, and no later than thirty (30) days from the date of service of written notice of entry of that order.
>
> 3. A judgment or order is entered within the meaning of this rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. . . .

(2) Nevada Supreme Court Rules Rule 44. *Person may appear in his own behalf.*

> Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

STATEMENT OF THE CASE

This case stems from a civil claim for damages by the Petitioner as a result of acts of the Defendants alleged to have violated State and Federal Racketeer Influenced and Corrupted Organizations acts (RICO). Plaintiff's course of proceedings in this case is also fraught with procedural mistakes and frivolous pleading.

Petitioner first initiated these RICO actions in the Eighth Judicial District Court for the State of Nevada, and subsequently attempted to remove that case to the jurisdiction of the United States District Court for the District of Nevada. However, the federal court remanded the case back to state court pursuant to 28 U.S.C. §1446, on the basis that the case was improvidently and improperly removed by a plaintiff because such remedy only exists

for defendants. Petitioner then appealed this remand decision to the United States Court of Appeals for the Ninth Circuit, which determined that the district court's remand was proper, as that court lacked jurisdiction under 28 U.S.C. §1446, and that under 28 U.S.C. §1447(c), removal is immune from appellate review. *See*, Ninth Circuit Court Order, dated November 20, 1990, attached hereto and incorporated herein as Appendix "A".

During the period of removal, the state granted Respondents' Motion to Dismiss, and once the action was remanded to state court, the state court allowed Petitioner 20 days to respond to that Motion. That Order also admonished the Petitioner that a frivolous opposition would result in an award of attorneys' fees and costs as a sanction, and informed him he must comply with the rules of the Court or proceed at his own peril. *See*, Eighth Judicial Court Order, dated January 24, 1991, attached hereto and incorporated herein as Appendix "B".

That opposition was determined to be frivolous and without merit, and the state court, once again, granted Respondents' Motion to Dismiss, and ordered Petitioner to pay attorneys' fees as a sanction. *See*, the Eighth Judicial Court Order, dated March 22, 1991, attached hereto and incorporated herein as Appendix "C". Such sanction was not for Petitioner's failure to retain an attorney. In that same Order, the state court found that the Answer filed on November 14, 1988, on behalf of Defendants, Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the joinder in the Answer, filed September 20, 1989, on behalf of all other named Defendants, was a responsive pleading as pursuant to Nevada Rule of Civil Procedure 12(a).

Petitioner appealed that Order to the Nevada Supreme Court, filed on March 14, 1991. Because the state court's Order was not entered until March 22, 1991, the Nevada Supreme Court deemed it did not have jurisdiction over the appeal and granted Petitioner 20 days from the date of that Order to show cause why the appeal should not be dismissed with prejudice. *See*, the Nevada Supreme Court Order, filed August 12, 1991, attached hereto and incorporated herein as Appendix "D". Upon Petitioner's failure to show cause and after the parties had stipulated to dismiss the appeal, the Nevada Supreme Court dismissed the appeal with prejudice. *See*, the Nevada Supreme Court Order, filed September 30, 1991, attached hereto and incorporated herein as Appendix "E".

Petitioner now attempts to incorporate these lower court actions and responses to Petitioner's procedural non-compliance, non-conformity and meritless documentation into his appeal to this Court.

ARGUMENT SUMMARY

I.

The Nevada Supreme Court's dismissal of Petitioner's appeal for lack of jurisdiction predicated upon such appeal being premature was proper. Without the proper showing of cause as to why this Court should grant jurisdiction, the Court had no choice but to dismiss the appeal.

II.

All but two of the questions presented by Petitioner for consideration by this Court are time-barred as they are presented and filed with the Clerk of this Court in excess of 90 days after the Order deciding those issues was entered by the state court on March 22, 1991. Due to the dismissal of Petitioner's with prejudice by the Nevada Supreme Court, the two issues timely filed are whether the Nevada Supreme Court acted properly in dismissing Petitioner's appeal for lack of jurisdiction, and whether the Nevada Supreme Court's Rule requiring a licensed attorney to argue an appeal is Constitutional. The other issues presented by Petitioner are time-barred from consideration because of the dismissal of appeal by the Nevada Supreme Court rendering such an appeal as a nullity. The time used for computing the time period of petitioning this Court for Writ of Certiorari began on those issues when the decision by the Eighth Judicial District Court was rendered. Because Petitioner did not refile his issues for appeal with the Nevada Supreme Court, those issues are now time-barred for presentation to this Court for consideration for Writ of Certiorari.

III.

An individual has no absolute right to argue his own appeal, a sharp contrast with his recognized privilege of conducting his own defense at trial. The criminal defendant has a right to handle his trial, but this right is limited on appeal by the discretion of the court hearing that appeal and allowing him to represent himself. The right to argue, personally, an appeal does not rise to the

Constitutional dimensions as Petitioner would have this Court believe, nor does it violate the Judicial Act of 1789. Oral argument on appeal is not an essential ingredient of due process, and it may be circumscribed where reasonable necessities so dictate.

ARGUMENT

I.

INTRODUCTION

The Rules of the Supreme Court, and specifically, Rule 10, provide the guidelines under which this Court will generally exercise its discretion and grant a petitioner a Writ of Certiorari. "Only when there are special and important reasons therefor," will a petition be granted. The issue of whether the Nevada Supreme Court acted improperly when it dismissed Petitioner's appeal for lack of jurisdiction, based upon a premature filing, is neither "special," nor "important," nor is the issue of whether a pro se litigant may argue his own appeal. The issues presented are well-settled and have been decided previously by this Court.

The guidelines set forth in United States Supreme Court Rule 10(c), under which Petitioner deems this Court has jurisdiction, provides when a Writ of Certiorari may be issued:

> When a state court or United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal

question in a way that conflicts with applicable decisions of this court.

One question to be answered by this Court is whether the Nevada Supreme Court, in rendering its decision to dismiss Petitioner's appeal with prejudice, did so in a manner which conflicts with the applicable decisions of this Court. Also, this Court must decide whether the Nevada Supreme Court Rule requiring an *in propria persona* litigant to obtain an attorney for an appellate argument is Constitutional or in violation of the Judicial Act of 1789, not, as Petitioner would have this Court believe, whether such an action by the Nevada Supreme Court constitutes a federal question decided in a manner which conflicts with previous decisions of this Court, or has not yet been settled by this Court.

As demonstrated in the following argument, the Nevada Supreme Court's decisions on these issues have been decided by the Supreme Court itself. Those decisions hold that a prematurely filed appeal is interlocutory, and the Supreme Court of the State of Nevada lacks jurisdiction until the decision of the Eighth Judicial District Court becomes final as to all parties and is properly rendered, recorded, and filed. Further, this Court has held that an individual has no absolute right to argue his own appeal.

II.

THE DISMISSAL WITH PREJUDICE OF PETITIONER'S APPEAL TO THE NEVADA SUPREME COURT WAS PROPER

The Nevada Rules of Appellate Procedure clearly dictate the necessary procedure for filing a timely appeal

to the Supreme Court of the State of Nevada. Rule 4 reads in pertinent part:

> *Appeal – when taken.*
>
> (a) Appeals in civil cases.
>
> 1. In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the district court. The notice of appeal filed after the oral pronouncement of decision or order, but before the entry of a written judgment or order, shall have no effect. A notice of appeal must be filed after the entry of a written judgment or order, and no later than thirty (30) days after the date of service of written notice of the entry of the judgment or order appealed from. . . .
>
> . . . .
>
> A notice of appeal filed before the formal disposition of any timely post-judgment motion enumerated in this subdivision shall have no effect. A notice of appeal must be filed after the entry of a written order of the district court resolving any of the post-judgment motions enumerated in this subdivision, and no later than thirty (30) days from the date of service of written notice of entry of that order.
>
> 3. A judgment or order is entered within the meaning of this rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. . . .

This Rule clearly points out, as the Petitioner should have been aware, that a Notice of Appeal filed before the entry

of a written judgment or order, after the oral pronouncement of a decision, shall have no effect. Thus, because Petitioner's appeal was premature, filed with the Nevada Supreme Court on March 14, 1991, before the district court's written Order was entered on March 22, 1991, the appeal has no effect and was properly dismissed. *See*, Appendices "D" and "E". Petitioner was notified that the Court lacked jurisdiction because the appeal was premature. Moreover, that Order demonstrates the Court's flexibility in allowing this particular Petitioner 20 extra days to show cause why the appeal should not be dismissed for such a want of jurisdiction. Petitioner attempted to show cause by stating that the Order of the state court was not final as to all parties. He failed. The Nevada Supreme Court disagreed and dismissed his appeal.

Because the Notice of Appeal was filed too soon, the district court had not yet divested itself of jurisdiction, and the Nevada Supreme Court had not yet acquired it. *Paradise Palms Community Association v. Paradise Homes*, 568 P.2d 577 at 578 (Nev. 1977), cert. den. 435 U.S. 997, 98 S.Ct. 1650, 56 L.Ed.2d 86 (1978). There are sound reasons for this rule. First, the proper and timely filing of a notice of appeal is mandatory and jurisdictional. *Torres v. Oakland Scavanger Co.*, 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982).

Jurisdictional rules go to the very power of a court to act. They must, accordingly, be clear and absolute in order to give all fair notice of what is required to properly bring a matter before the Nevada Supreme Court.

Prior to the entry of a final judgment, a district court remains free to reconsider the issue of a written judgment different from its oral pronouncement. The point at which jurisdiction is transferred must, therefore, be sharply delineated. This rationale has been applied to appeals and the time for filing by this Court when holding that a premature appeal must be dismissed as an interlocutory order. *See, United States v. Ryan*, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971); *Cobbledick v. United States*, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940). Respondents respectfully request this Court to use that same rationale to reach the conclusion, in considering this Petition, that the Nevada Supreme Court's decision to dismiss Petitioner's appeal to it for lack of jurisdiction was proper.

Petitioner had the ability to refile an appeal after the district court entered its final judgment on March 22, 1991. He neglected to do so, and as a result, the issues presented to this Court that were not ruled upon by the Nevada Supreme Court are time-barred as in excess of 90 days from their final determination by the Eighth Judicial District Court on March 22, 1991.

III.

THE QUESTIONS PRESENTED BY PETITIONER ARE TIME-BARRED FROM CONSIDERATION BY UNITED STATES SUPREME COURT RULE 13

The United States Supreme Court Rule addressing the review on Certiorari; Time for Petitioning, demonstrates to this Court that Petitioner's claims are time barred from consideration, requiring this Court to deny

this Petition for Writ of Certiorari. Rule 13.1 reads in pertinent part as follows:

> A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the clerk of this court within 90 days after the entry of the judgment. A Petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed within 90 days after entry of the order denying discretionary review.

As this Rule clearly dictates, the time frame is 90 days for which to file with the Clerk of the United States Supreme Court a petition for writ of certiorari after entry of the judgment sought to be appealed. Additionally, Congress established in 28 U.S.C. §2101 the time for filing a petition, and such mandate must be followed by the Petitioner as a prerequisite to this Court's jurisdiction. *Schacht v. United States*, 398 U.S. 58, 65, 90 S.Ct. 1555, 26 L.Ed.2d 44 (1970). As held by this Court, the statutory requirement that the petition for writ of certiorari in civil cases be filed within 90 days of entry of judgment in lower courts is mandatory and jurisdictional, giving this Court no authority to extend that period for filing, except as Congress permits. *See, Missouri v. Jenkins*, 495 U.S. 33, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990).

Because the Nevada Supreme Court denied Petitioner's appeal as premature, it never had jurisdiction of the case and did not deny appeal of the issues presented. It simply never reviewed those issues. Therefore, the Eighth Judicial District Court retained jurisdiction, and

the Nevada Supreme Court's decision to dismiss with prejudice Petitioner's appeal as premature was proper.

This leaves Petitioner appealing the decision of the district court as to the issues presented to this Court for review. Because the final Order issued by the district court was on March 22, 1991, those issues are now time-barred for reconsideration by this Court, as clearly in excess of the 90 day mandate of the Supreme Court Rules and the Statutes of the United States. Petitioner's deadline for filing ended, at the very latest, in June of 1991. The Petition for Writ of Certiorari was not filed with this Court until December 30, 1991, almost 120 days in excess of the 90 day period. Thus, this Court must deny Petitioner's Writ for Certiorari on these issues.

IV.

THE NEVADA SUPREME COURT RULE REQUIRING AN ATTORNEY LICENSED IN THE STATE OF NEVADA TO ARGUE AN APPEAL IS CONSTITUTIONAL

The Petitioner claims the limitation of the Nevada Supreme Court requiring an attorney licensed in the State of Nevada to proceed with the appeal constitutes a Constitutional violation. Nevada Supreme Court Rule 44, which Petitioner alleges violated his Constitutional rights, reads as follows:

> *Person may appear in his own behalf.*
>
> Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

Petitioner claims that this is a violation of the Judicial Act of 1789 of the First Congress, Session 1, Chapters 20(XX), Sections 32 and 35, and is in conflict with the policies of this Court in the case of *Haines v. Kerner, former governor, State of Illinois, et al.*, 405 U.S. 948, 92 S.Ct. 963, 30 L.Ed.2d 652 (1972). However, that case arises out of a district court granting a respondent's motion to dismiss, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. The ultimate issue brought before the Supreme Court in that case was whether a district court erred in dismissing a pro se complaint without allowing him to present evidence of his claims of a deprivation of a federally protected right. More specifically, the Court delved into the sufficiency of the pleadings and how they were drawn, not whether the pro se petitioner could represent himself on appeal in front of the court of appeals. Therefore, such case is inapplicable to the Petition currently before this Court.

The United States District Court of Nevada has upheld this Nevada Supreme Court rule in a previous challenge, in the cases of *Mirin v. Justices of Supreme Court*, 415 F.Supp. 1178 (1976) and *Price v. Johnston*, 334 U.S. 266, 68 S.Ct. 1049, 92 L.Ed.2d 1356, (1947), where this Court had elaborated on the distinction between trials and appeals, with the criminal defendant having a right to handle his trial, but being limited on appeal by the discretion of the United States Court of Appeals in allowing or disallowing him to represent himself. In studying the discretionary nature of appearing without representation on appeal, the Court in *Price*, 334 U.S. at 285-286, 68 S.Ct. at 1060, 92 L.Ed.2d at 1369, held:

> The discretionary nature of the power in question grows out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. *Schwab v. Berggren*, [143 U.S. 442, 12 S.Ct. 525, 36 L.Ed.2d 218] *supra*. The absence of that right is in sharp contrast to the Constitutional prerogative of being present in person at each significant stage in a felony conviction, [citations omitted] and to his recognized privilege of conducting his own defense at trial. . . . Oral argument on appeal is not an essential ingredient of due process, and it may be circumscribed as to prisoners where reasonable necessity so dictates.
>
> A prisoner's right to participate in oral argument on appeal is accordingly to be determined by the exercise of the discretionary power of the circuit court of appeals under §262.

The court in *Mirin* then concluded that because the court, in *Price*, made it clear that the right to argue, personally, a criminal appeal, does not rise to federal Constitutional dimensions, it necessarily follows that the civil defendant's right to orally argue a civil appeal can be no greater.

As the District Court of Nevada applied *Price* to its civil action in *Mirin, supra*, these Respondents ask this Court to apply *Price* to the situation presented in the Petition herein. Then, the refusal to allow the Petitioner's appearance *in propria persona* before the Nevada Supreme Court does not violate the Judicial Act of 1789 of the First Congress, Session 1, Chapter 20(XX), Sections 32 and 35. For that reason, this Court must deny Petitioner's Writ of Certiorari on this issue.

V.

CONCLUSION

As demonstrated by the arguments above, the sole question presented to this Court within the mandatory 90 day period for a petition for writ of certiorari, is whether the Supreme Court of Nevada properly dismissed Petitioner's appeal for a lack of jurisdiction. All other issues adjudicated by the Eighth Judicial District Court, culminating in a final Order of March 22, 1991, were not presented to the Nevada Supreme Court and are now time-barred for reconsideration by this Court. United States Supreme Court Rule 13; and 28 U.S.C. §2101. Accordingly, the decision of the Nevada Supreme Court dismissing Petitioner's appeal as premature for lack of jurisdiction must be affirmed, and the Petition for Writ of Certiorari must be denied.

Further, if denying a pro se criminal defense, a right to participate in oral argument on appeal does not rise to federal Constitutional dimensions, neither can denying a pro se civil defendant. For that additional reason, Petitioner's Writ for Certiorari must be denied.

Respectfully submitted,

RAWLINGS, OLSON & CANNON

DANA JONATHON NITZ, Esq.
301 East Clark Avenue, #1000
Las Vegas, Nevada 89101
(702) 384-4012
Attorney for Respondents

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RON CAMPBELL, Plaintiff-Appellant, vs. THALIA DONDERO, et al., Defendants-Appellees.	No. 89-15493 D. C. No. CV-88-0770-LDG MEMORANDUM* (Filed Nov. 20, 1990)

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted November 16, 1990**

Before: FLETCHER, WIGGINS, and RYMER, Circuit Judges.

Ron Campbell appeals pro se the district court's remand of his civil RICO action which Campbell had removed to federal court. We dismiss the appeal pursuant to 28 U.S.C. § 1447(d) for lack of jurisdiction.

On September 26, 1988, Campbell filed his complaint in Nevada state court alleging federal and state RICO

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

violations by the defendants. The next day, Campbell removed his action to federal district court for the District of Nevada. On March 17, 1989, the district court denied the petition for removal and remanded Campbell's action to state court because it could only properly be removed by the defendants pursuant to 28 U.S.C. § 1446. Campbell filed a timely notice of appeal with this court.

28 U.S.C. § 1447(c) requires a district court to remand a case to state court when it determines the case was removed without jurisdiction. *Whitman v. Raley's, Inc.*, 886 F.2d 1177, 1180 (9th Cir. 1989). Remand orders based on the grounds specified in section 1447(c), i.e., that removal was "improvident and without jurisdiction," are immune from appellate review. *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976); *Hansen v. Blue Cross*, 891 F.2d 1384, 1387 (9th Cir. 1989) (citing 28 U.S.C. § 1447(d); *Gravitt v. Southwestern Bell Tel. Co.*, 430 U.S. 723, 723 (1977) (per curiam)). When a district court's remand order is based on a nonjurisdictional ground, however, section 1447(d) does not bar appellate review. *Hansen*, 891 F.2d at 1387 (citations omitted).

Here, the district court remanded Campbell's action to district court because Campbell, and not the defendants, had removed the case to federal court. Removal is available only to defendants. 28 U.S.C. §§ 1441(c), 1442, 1443, 1446(c); *Okot v. Callahan*, 788 F.2d 631, 633 (9th Cir. 1986). The district court, therefore, determined that it lacked jurisdiction to review Campbell's action due to a "defect in removal procedure." *See* 28 U.S.C. § 1447(c). Because the district court's decision to remand was based on a jurisdictional ground, section 1447(d) precludes our

review of the remand order. *See id.; Hansen,* 891 F.2d at 1387.

Appellees' request for attorneys fees on appeal pursuant to Fed. R. Civ. P. 11 is denied.

DISMISSED.

APPENDIX B

DANA JONATHON NITZ, ESQ.
RAWLINGS, OLSON & CANNON
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
(702) 384-4012

DISTRICT COURT

CLARK COUNTY, NEVADA

RON CAMPBELL, Plaintiff, vs. THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; W. WILSON, AND BRUCE L. WOODBURY, INDIVIDUALLY and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, INDIVIDUALLY and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, INDIVIDUALLY and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MALON EDWARDS, INDIVIDUALLY and as a Deputy DISTRICT	CASE NO. A268414 DEPT NO. X DOCKET K ORDER (Filed Jan. 25, 1991) HEARING DATE: 1-15-91 HEARING TIME: 9:00 a.m.

ATTORNEY of the CLARK COUNTY DISTRICT ATTORNEY OFFICE; the CLARK COUNTY LIQUOR CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and the political subdivisions of the county of CLARK, state of NEVADA, and JOHN/JANE DOES 1 through 20 inclusive,

Defendants.

UPON HEARING OF PLAINTIFF'S MOTION TO SET ASIDE ORDER, attended by Plaintiff, Ron Campbell on his own behalf, and by Dana Jonathon Nitz, Esq., of the law office of Rawlings, Olson & Cannon on behalf of all Defendants, upon consideration of the parties' Points and Authorities and upon acquiescence of Defendants' counsel, it is hereby ORDERED:

1. Plaintiff's Motion is granted to the extent that the Order entered December 20, 1988, granting Defendants' Motion to Dismiss is set aside, provided Plaintiff files Points and Authorities in Opposition to that Motion to Dismiss.

2. Plaintiff shall have until February 4, 1991, in which to serve and file his Opposition.

3. If Plaintiff fails to serve and file his Opposition by February 4, 1991, the previous Order of this Court shall stand.

4. Defendants shall have until February 11, 1991, in which to file any reply Points and Authorities in support of their Motion to Dismiss.

5. Rehearing of the Motion to Dismiss shall be held February 12, 1991 at the hour of 9:00 a.m.

6. If Plaintiff files an Opposition to the Motion to Dismiss and the Motion is, once again, granted, this Court will award Defendants' reasonable expenses, including attorneys' fees, incurred as a result of Plaintiff's filing his Motion to Set Aside Order and Opposition to Motion to Dismiss under Rule 11 of the Nevada Rules of Civil Procedure and NRS 18.010.

7. All other relief requested in Plaintiff's Motion to Set Aside Order is denied.

DATED this 24th day of January, 1991.

JACK LEHMAN
DISTRICT JUDGE

SUBMITTED BY:

RAWLINGS, OLSON & CANNON

/s/ Dana Jonathon Nitz
Dana Jonathon Nitz, Esq.
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
Attorneys for Defendants

APPENDIX C

DANA JONATHON NITZ, ESQ.
RAWLINGS, OLSON & CANNON
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
(702) 384-4012

DISTRICT COURT

CLARK COUNTY, NEVADA

RON CAMPBELL, Plaintiff, vs. THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; W. WILSON, AND BRUCE L. WOODBURY, INDIVIDUALLY and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK INDIVIDUALLY and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, INDIVIDUALLY and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MALON EDWARDS, INDIVIDUALLY and as a Deputy DISTRICT ATTORNEY of the CLARK COUNTY DISTRICT ATTORNEY OFFICE; the CLARK COUNTY LIQUOR	CASE NO. A268414 DEPT NO. X DOCKET K ORDER (Filed Mar. 22, 1991) HEARING DATE: 02-12-91 HEARING TIME: 9:00 A.M.

CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and the political subdivisions of the county of CLARK, state of NEVADA, and JOHN/JANE DOES 1 through 20 inclusive,

Defendants.

Defendants' Motion to Dismiss having come on for hearing this 12th day of February, 1991, Plaintiff RON CAMPBELL appearing on his own behalf, and Defendants THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON, BRUCE WOODBURY, CLARK COUNTY LIQUOR CONTROL BOARD, D. FITZPATRICK, OFFICER WELLINGTON, MALON EDWARDS, the CLARK COUNTY LIQUOR CONTROL BOARD, THE CLARK COUNTY LICENSE DEPARTMENT, THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE appearing by and through their attorneys, RAWLINGS, OLSON & CANNON and DANA JONATHON NITZ, ESQ., and after reviewing the Complaint and points and authorities of the parties on file herein, and having heard the arguments of counsel, this Court does hereby

ORDER, ADJUDGE AND DECREE that Defendants' Motion to Dismiss the Plaintiff's Civil Complaint for

Damages from Racketeer Influenced and Corrupted Organization Acts (RICO/NRS Chapter 207) seeking relief under 18 USC §1961 et seq. is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claim for relief pursuant to 18 USC §1961 et seq. is dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claims for punitive damages are dismissed as to all Defendants pursuant to NRS 41.035.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Opposition to said Motion is frivolous and that Plaintiff is ordered to pay to Defendants, in care of their counsel, RAWLINGS, OLSON & CANNON, $350.00 as and for attorneys fees as a sanction under Rule 11 of the Nevada Rules of Civil Procedure and NRS 18.010.

IT IS FURTHERED ORDERED, ADJUDGED AND DECREED that the Answer filed November 14, 1988 on behalf of Defendants Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the Joinder in Answer, filed September 20, 1989 on behalf of all other named Defendants is accepted by this court as a responsive pleading under Rule 12(a) of the Nevada Rules of Civil Procedure and no further pleading need be filed by Defendants.

DATED this 22 day of March, 1991.

JACK LEHMAN
DISTRICT JUDGE

SUBMITTED BY:

RAWLINGS, OLSON & CANNON

/s/ Dana Jonathon Nitz
Dana Jonathon Nitz, Esq.
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
Attorneys for DEFENDANTS

APPENDIX D

IN THE SUPREME COURT
OF THE STATE OF NEVADA

RON CAMPBELL, Appellant, vs. THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as a Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA, Respondents.	No. 22107

ORDER

(Filed Aug. 12, 1991)

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 USC §§ 1961 *et seq.*

Appellant has filed in this court a document entitled "Ex-Parte Motion to Dismiss Appeal," claiming that the judgment of the district court is not final as to all the parties. Appellant requests that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment has been entered by the district court. Included in appellant's motion is a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, we are unable to identify any party to whom the district court's judgment was not final. Further, we note that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. It appears, therefore, that appellant's notice of appeal was premature and fails to vest jurisdiction in this court. *See* Ruse v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

Accordingly, appellant shall have twenty (20) days from the date of this order within which to show cause why this appeal should not be dismissed with prejudice.

We stay the briefing of this appeal pending further order of this court.

It is so ORDERED.

/s/ Springer A.C.J.

cc: Alan R. Harter
Rawlings, Olson & Cannon

APPENDIX E

IN THE SUPREME COURT
OF THE STATE OF NEVADA

RON CAMPBELL, Appellant, vs. THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as a Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA, Respondents.	)	No. 22107

ORDER DISMISSING APPEAL

(Filed Sept. 30, 1991)

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 U.S.C. section 1961 (1988).

Appellant filed in this court a document entitled "Ex-Parte Motion to Dismiss Appeal," claiming that the judgment of the district court is not final as to all the parties. Appellant requested that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment had been entered by the district court. Included in appellant's motion was a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, this court was unable to identify any party to whom the district court's judgment was not final. Further, we noted that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. Thus, it appeared that appellant's notice of appeal was premature and failed to vest jurisdiction in this court. *See* Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987). This court therefore ordered appellant to show cause why this appeal should not be dismissed with prejudice.

In response to our order to show cause, appellant does not identify specific parties to whom the district court's order was not final. Rather, appellant states that "[a]nswers had been filed in the court below for Defendants Dondero, Las Vegas Metropolitan Policy Department, and Wellington only, and the Order of the Court below filed March 22, 1991, actually applied only to the

answering Defendants." This is not true. As stated in the order of the district court entered March 22, 1991, all other named parties joined in the answer on September 20, 1989. The district court's order was thus final as to all parties.

Because the district court's order was final as to all claims and all parties, and because appellant's notice of appeal was premature with respect to that order, we conclude that we lack jurisdiction to entertain this appeal. Accordingly, we dismiss this appeal with prejudice. We deny as moot the parties' motion to dismiss this appeal without prejudice.

It is so ORDERED.

/s/ Mowbray, C.J.
Mowbray

/s/ Springer, J.
Springer

/s/ Rose, J.
Rose

/s/ Steffen, J.
Steffen

/s/ Young, J.
Young